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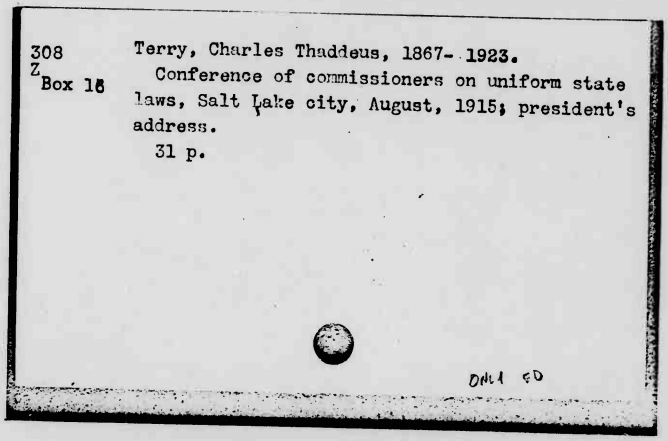
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CONFERENCE OF COMMISSIONERS

ON

UNIFORM STATE LAWS

SALT LAKE CITY, AUGUST, 1915

PRESIDENT'S ADDRESS

BY

CHARLES THADDEUS TERRY

PRESIDENT'S ADDRESS

BY

CHARLES THADDEUS TERRY

UNIFORMITY—A RECIPROCAL DUTY OF THE LAW-MAKERS AND THE ELECTORATE.

The assumption that legislators acquire a certain omniscience by virtue of the mere fact of their election to office is a lamentable error, and has led to many disasters in the course of governmental processes.

The further assumption that laws will, in some occult or mysterious way, enforce themselves, is likewise a deplorable mistake, all too common to our easy-going civic conscience.

Couple together these two fundamental misconceptions and it may perhaps be asserted with reasonable justification, that you have the explanation of much of the defectiveness of our so-called "government of laws". The Law as a Rule of Conduct, in a Democracy, is predicated upon the condition that it emanates from the people themselves, whose conduct is to be ruled, and is enforced by them in the self-same spirit in which it was originally promulgated. It would seem to be sufficiently obvious that there can be no break or interruption in the line of the popular intention, as to what the rule shall be from the moment of its initiation to the moment of its full consummation in the application of it to the daily routine of life, if the true theory of Democratic Government is to be given a fair test. If there can be no interruption in the course of the exercise of this volition, much less can there be a divorcement between the source and the ultimate outflow. One might as well seek to ignore the seed when contemplating the fruit, or forget the fruit when considering the seed. The system must be taken as a whole, or it must be abandoned. No fragment of it, taken alone, is of much, if any, value.

It is submitted that we have too long allowed ourselves to be misled by the supposition that the legislatures "make the laws". They do not. The supposition is very far from the truth. There has been much loss of progress, much loss of efficiency, and much loss of accomplishment, by indulgence in the initial error embodied in the familiar phrase which has sometimes passed for a definition of one of our branches of government, namely: that "legislatures make the laws". It has not been the first time, nor will it be the last time, that efforts of prime importance are thrown into disorder and robbed of much, if not all, of their forcefulness by the blind following of a phrase.

Legislatures find their legitimate sphere in the enactment of statutes, and should serve only as an instrument to record the people's will, which, before such enactment, shall express itself in terms of policy, and, after such enactment, shall use the record simply as a basis for the application of such policy to its own affairs. The legislature is, in fact, but an intermediate device for formulation and not, in any sense, a source nor an executive factor. Those two functions, one at each end of the process, belong alike to the electorate.

The means should not be confused with the end. The crystalization, into the form of statute, of the sentiment respecting the proper ordering of conduct, is only one step in the process,—an important step to be sure,—but still one which falls far short of the end to be reached. Responsibility is not discharged until the statute has been made an integral part of the machinery of the state, and is continuously employed in the regulation of its affairs.

These reflections have an intimate bearing upon the obligations assumed by every Commissioner when he takes his solemn oath of office. His fealty to the cause, which he swears to serve, requires that, without cessation, he contribute liberally of his time, his experience, and his efforts at three of the four stages of statutory progress, namely: the *second* stage, that which consists of the moulding of state laws into uniformity of shape, and of substance; the *third,* that which consists in invoking the power of the legislature to impress with the stamp of its official approval, the standardization of the laws

thus recast by the Conference; and *fourth,* that which consists in enlisting the co-operation of members of the Bar, whether upon the Bench in judicial position, or, off the Bench, in the ranks of the practitioners, to frame their arguments, or their opinions, as the case may be, in obedience to the mandate conveyed by the express provision found in each of these laws(1) that "this law shall be so construed as to effectuate the general purpose of uniformity."

With the *first* stage of statutory progress, namely: the initiation of laws on entirely new subjects, or of entirely new laws on old subjects, or, in a word, *with laws of first impression, this Conference has nothing whatever to do.* That is exclusively the privilege and the prerogative of the electorate and their chosen representatives in legislature assembled.

We must not trespass upon the exclusive territory of the people and their legislative agents, but on the other hand, it will be equally abhorrent and intolerable, if we, as Commissioners, neglect or ignore *any* of the duties which in fact pertain to our office, and which are, by every behest and command of our respective states, laid heavily upon us. Those duties constrain us not only to round into uniformity divergent laws of the states on subjects common to them all, to bring about the enactment of those uniform laws, and to influence the bench and bar, so far as we legitimately may, to uniformity of interpretation;—*these three* are the *pleasure and the duty of the commissioner,—and only these.*

But the Conference and the electorate, alike, expect every commissioner to do his duty,—not only in one or two, *but in all three* of these respects.

Every one of us, as Commissioners, owes a clear and unconditional duty, not only to his own state, but, his task being national in its scope, to every one of the other states, to exert his utmost effort and influence, between conferences, in pursuit of those functions which have just been enumerated, as the second, third and fourth of statutory progress, to wit: the drafting of variant statutes into uniformity, adoption of them by his state, and the attainment of a uniform interpretation

(1) Warehouse Receipts Act, Bills of Lading Act, Sales of Goods Act, Transfer of Stock Act, Partnership Act, etc.

of the statutes by his courts. The proposition is stated thus baldly, because only by its constant observance shall we be able to disarm criticism if it should arise. In this day, and thus far, no legitimate claim can be made that there has been any paucity of accomplishment or meagreness of results; but we must be alert against what the future may hold.

Let us, then, improve the time, as well *between* sessions, as *at* them, warned against what may become justifiably caustic comment, and stimulated by what has already become a commendable achievement.

When reference was made, a moment ago, to the national scope of the office of Commissioner on Uniform State Laws, a significance was intended to be conveyed deeper than may be found in the recognition of the needs of all the states of freedom from inharmonious laws on specific subjects of mutual state concern. It was intended to point to

UNIFORMITY AS AN ANTIDOTE TO CENTRALIZATION OF GOVERNMENT.

The militant spirit of States' Rights which characterized a former day, and especially possessed particular sections of our country, has noticeably waned. It was a spirit so violent in its self-assertion as to include the declaration of the right of any state to secede from its association with all the other states. Its consequences are enrolled in the history of the Civil War, its extreme application was the essential factor in bringing about that cementation of the ties which bind the various units in our body-politic, which established, once and for all, the indissoluble union, and it constituted the background for the noblest spectacle in history,—the spectacle of a reunited brotherhood of Americans, purified of the bitterest of fraternal hatred, and purged of the deadliest of personal animosities.

But that sentiment or doctrine of States' Rights has now all but disappeared; and who shall say that it is not well that it is so? And yet, departing, it has left, in its wake, a danger hardly less to be feared,—the danger that by indifference the states may inadvertently abrogate their high positions as sovereignties, and abdicate their prerogatives as such to govern

their citizens,—thus leaving the Federal Government at liberty, and indeed under the necessity, to legislate where the states have failed. If the states abandon their right to make laws for the mutual protection of their citizens, then, will the citizens, perforce, appeal to the Federal Government to secure, in another form, which is not the natural form, nor the one contemplated by our system of government, that protection which had been denied them at the natural source.

We do not suggest, much less plead for, the revivifying of the old jealous spirit. The remedy which is needed is not the ***restoration of States' Rights, but the observation of States' duties.***

It is in the performance of such duties that the Commissioners on Uniform State Laws are rendering signal aid, and thus, more than by any other agency, pointing the way, and blazing the path to safety from that concentration of power in the Federal Government which would mean, in the last analysis, the destruction of our unique experiment in Democracy.

Thus do the most practical accomplishments go hand in hand with the highest ideals.

UNIFORMITY A REASONABLE AMBITION.

The vigorous pursuit of an ideal, to be successful, must command, as its concomitants, both faith and reason. If it be accompanied neither by faith nor reason, it will inevitably sink into the black abyss of failure. If it be attended by reason alone, without faith, he who seeks to travel the course will fall by the wayside, exhausted before the goal is reached,—faint from despair. If it be attended by faith alone, without reason, then excessive zeal soon grows into fanaticism.

When faith looks backward and views the vertible realizations of her fondest visions:—and then looks forward with confident assurance, based upon reason, tested and found trustworthy, to still higher and further visions, that faith is, and will continue to be, justified of her children.

Uniformity is not simply a name, it is a principle, and a principle which is of the very essence of Democracy, if we mean by Democracy that state of society in which there is one law,

equable in its application to the rights of all men alike everywhere; and to achieve that ideal in matters which relate to interstate interests or transactions, there must be one law common to all the states and such law must be secured either by Federal enactment, involuntarily imposed, compulsory upon all the states, irrespective of their particular desires, or it must be secured by voluntary uniform state enactment growing out of the deliberate initiative of each of such states.

When men or nations take leave of reason and abandon faith, then, they are certain to disregard fundamental rights and ignore essential principles; and never more so than when they fail to observe the duty which one community, state or nation owes, by the elementary laws of nature and humanity, to every other community, state or nation. In such a spirit selfishness grasps the helm,—and the end of selfishness is self-destruction. Thus, indeed, a great principle may be dragged to the level of a *mere name,*—a *word* which is not even a symbol. The man or nation taking that view, transmutes the inter-relations which spell brotherhood, into that exclusiveness which spells isolation,—and thereby law is turned into chaos. Witness the startling illustration drawn, in vivid colors, before our eyes in this very day! The spokesman of a great nation gave the example, which should convincingly serve also as a perpetual warning,—when he said:

> "Just for a word, neutrality—a word which in war times has been so often disregarded, Great Britain is going to make war on a kindred nation."

To thus confuse *words* with the *principles* for which they stand, has led, and must always lead to grief and calamity. It leaves out of account both faith and reason. Faith and reason look inexorably back and look undauntingly forward.

Thus in the work which we have in hand we must constantly pursue this course of faith and reason, ever testing our plans for the future by the history of the past.

A SUMMARY OF PAST ACHIEVEMENTS.

Following this course,—we look backward for the reason of our high hopes in the future, and we find that:

(*a*) Every state, territory and federal possession has recognized, by appointment of commissioners to this body, either by special statutory authority or by general gubernatorial prerogative, the work of this organization.

(*b*) Forty-six states and the territory of Alaska and all the federal possessions have adopted as a part of their statutory law the very first uniform act approved and recommended by this Conference.

(*c*) That thirty-two states, territories, federal districts and possessions have adopted the Warehouse Receipts Act, the second measure approved by the Conference in the order of time.

(*d*) That twelve states and the territory of Alaska have approved and adopted the Sales Act recommended by the Conference as its third measure in the order of time.

(*e*) That the succeeding acts approved and recommended by the Conference have been adopted by the states in varying numbers commensurate and proportionate to the length of time during which such acts have been in the category of statutes endorsed by the Conference, and the special character of the subject matters dealt with therein.

(*f*) That in twelve different instances, during the recent sessions of the legislatures, various of the uniform acts promulgated by the Conference were adopted as laws by the states.

JUDICIAL CO-OPERATION AND APPROVAL.

When there be added to the satisfaction exhibited on the part of the chief executives and the legislatures of the various states of the Union in the work of the Conference, the hearty approval of the various state Bar Associations throughout the country, manifested in many substantial ways, including contributions to the general funds of the Conference and to the work involved in securing the passage of uniform acts by the respective state legislatures, the discriminatory praise of the Conference and its work by individuals in thesis and address,

when there be added to these the very distinct and analytical commendation of the courts voiced in no uncertain terms by members of the bench in different parts of the country in the course of judicial opinions upon cases before them, involving our uniform laws, it may be said perhaps with reasonableness that the success of the movement is demonstrated.

For illustration, it may be noted that Mr. Justice Mack, of the Illinois Supreme Court, in his opinion in a recent case(1) uses language which will be gratifying and encouraging to the Commissioners who compose this body.

After quoting from another case(2) in which it was said, referring to the principles governing stock certificates,—"these principles are well known to business men and are constantly acted upon by them", and that "this circumstance should be given due weight in determining the rights of the parties in this case," he said:—

> "This 'due weight', in our judgment, leads to the conclusion that, in this respect, stock certificates are to be dealt with in the same way as commercial paper. By the great weight of authority at common law, both in England and the United States, and now by the Uniform Negotiable Instruments Act, in force in forty-six jurisdictions, one who takes commercial paper as collateral security for a pre-existing debt is deemed to have given value." (Citing cases.) (3)
>
> "Stock certificate cases decided by the State Courts which decline to follow the Federal Rule as to uniform negotiable paper are, therefore, not persuasive."
>
> "In Illinois, moreover, contrary to the weight of authority, the pledgee of an ordinary chattel given to secure a pre-existing debt, is protected as against a defrauding vendor thereof; and a like rule prevails in the eleven jurisdictions that have adopted the Uniform Sales Act."
>
> "As further evidence of the mercantile view of the character of documents such as stock certificates, bills of lading and warehouse receipts, it may be noted that

(1) National City Bank of Chicago, *et al. v.* Wagner, *et al.;* Rogers *v.* National City Bank, 216 Fed. Rep. 473.
(2) National Deposit Company *vs.* Hibbs, 229 U. S. 391.
(3) Swift *vs.* Tyson, 16 Pet. 1; Railroad Co. *vs.* Bank, 102 U. S. 14; Manning *vs.* McClure, 36 Ill. 490.

> under the provisions of the Uniform Warehouse Receipts Act in force in thirty jurisdictions, including Illinois, the Uniform Bills of Lading Act, in force in eleven jurisdictions including Illinois, and the Stock Certificate Act, in force in nine jurisdictions, the purchaser for value is defined as including one taking such documents as collateral for a pre-existing debt. Moreover, stock certificates and bills of lading even stolen, and warehouse receipts when entrusted to another, are fully negotiable."(1)

Thus are the views and the purposes of the Conference given effect.

Again, the wisdom of the creation of our Committee on Uniformity of Judicial Decisions, and the broad extent and effective character of the work which it has done, have been repeatedly disclosed, and never more so than by the fact of an application made in the last few weeks by a Justice of a court of record of New York State for the privilege of examining the cases collected by our Committee on a mooted point under the Negotiable Instruments Law, the aid being asked avowedly in connection with a case pending before the Justice and on a point which would be determinative of the litigation.

The knowledge which the courts have now secured of the Conference and its work, and of the material made available by the efforts of its officers and committees, are proving themselves effective in bringing judicial interpretation of the Uniform Laws within the spirit of those laws, both as to the substance of the acts themselves, and as to the purpose of uniformity embodied in them. Thus what seems to have been an inadvertence and misconception of the Uniform Warehouse Receipts Act involved in the decision in a former case, decided by a Federal Court of Louisiana in the Matter of Druiel & Co.(2) has been corrected in another decision, which has just come to our attention, and not yet reported in the official volumes, namely: the case of "The Matter of Richheimer" (3) rendered by the same court, and where the proper conclusion, as we

(1) It is significant that the court refers in this connection to 34 Am. Bar Assn. Rep. 1086-1096, and 38 Am. Bar Assn. Rep. 1029-1031.
(2) 205 Fed 568, aff'd in 211 Fed. 337.
(3) To be reported in 221 Fed.

view it under the Act in question, was reached, and the true significance of the provisions of that act soundly affirmed.

ANTICIPATION.

If there is well-founded gratification to be found in the achievements of the past, there is justifiable confidence in a contemplation of the future.

We have in anticipation measures rich in promise of amelioration of existing conditions, calculated to remove uncertainties and divergencies of law, designed to standardize and unify the rights and remedies incident to several departments of jurisprudence, and presenting the solutions reached by the Conference and its committees, after much patient toil, of problems which have long pressed themslves upon the conscientious attention of thoughtful lawyers.

A brief reference to some of the more important of these will suffice as a recapitulation of the tasks which the Conference has had in course of performance for a varying number of years, and which, in view of the caution and deliberateness, which we insist shall characterize our work, are yet unfinished and which await further debate, and perhaps, further modification, to meet the exacting demands of our ideal,—at the same time, I say, as a recapitulation and a presentation of the general outline of a program for the work of this present session, which the Executive Committee will wish to offer you more in detail.

THE INCORPORATION ACT.

The incursion by the Federal Government into the field of corporate regulation was occasioned in part, if not altogether, by the failure on the part of the respective states to thoroughly and adequately limit and regulate its own corporate bodies. If the states had given early and thoroughgoing attention to the proper adjustment of their own corporation laws, there would have been, it may be justly said, no need for the central government to take in hand the restriction and direction of corporations engaged in interstate commerce. Some states, it is true, realize the danger to the commercial interests, in particular,

and to the public at large, in general, of lax corporation measures, and have performed their duties in this regard in an effective manner; but other states there are which have allowed to remain upon their statute books for years, or indeed have in comparatively recent times enacted corporation laws, so loose, so liberal in the powers granted to these creatures of the law, so free from the restraints which proper caution and a due regard to the rights of the citizens, would require, that an economic and legal scandal has been created and is being perpetuated. Improvement may be noted, in our time, in these respects, but the remedy is far from complete. It can never be completed until reasonably stringent corporate regulations are uniformly enacted by every state in the Union. The situation calls patiently but urgently upon the Conference for correction. So long as there is one state which maintains corporate laws which are farcical in their claim of regulation, so long will the trusting investor and the credulous creditor remain the victim of the unscrupulous promoter. In this connection it is literally true that "the chain is no stronger than its weakest link."

If, after the years of labor which this Conference has expended on the formulation of an adequate, reasonable and commercially sound uniform Incorporation Act, there be any state which persists in refusing to adopt it, and in maintaining, whether through carelessness or from an affirmative desire for revenue, its legal mockery in the form of a so-called corporate regulation act, then it will be to the lasting shame of such state and at least this Conference will have done all it can do to remove the blot upon our commerce and our jurisprudence.

THE TORRENS ACT.

Only second in importance to the act making Uniform the regulation of corporations, is the act making uniform the registration of land titles, and in philosophic, commercial and scientific interest, it may be well said, that the latter transcends the former. When the Conference entered the field of the Torrens System of registration, it found an area fertile to cultivation and rare in possibilities. Untouched for many decades, it had somehow

come to be regarded as closed to the investigator, whether because it was so closely guarded by those who were financially interested in perpetuating its form and appearance unchanged, or so closely hedged about with a tangle of ancient habit and almost impenetrable growth of forms and habitual practices, or whether the field disclosed to the view of those who examined it, so fair and satisfactory an aspect as to disarm criticism, one was at a loss to know; but the fact remains that, for some reason, progress had all but passed it by, when, within a comparatively recent period, it was discovered that even this exclusive domain was capable of vast improvement.

It is claimed on the one hand that the Torrens System of land registration is revolutionary; that it is an attempt at radical reform, void of practical beneficence. The former charge would only serve to arouse the profound interest of everybody, and would frighten nobody. The latter charge, if proved, would or should put an end, with complete finality, to any incursion into this field on the part of this body. But one must go further. Even if the introduction of the Torrens System were *logically* revolutionary, even if scientific thought indicated inevitably the necessity of such over-turning of settled soil; even though the reform were genuine and attended by most desirable practical consequences, nevertheless, there would be presented no slightest justification for participation by this Conference in such an undertaking.

It is no part of the province of this body to revolutionize jurisprudence, nor to reform the law. Its simple, plain and exclusive function is to make the law of the various states on matters which in their effect upon citizens of the respective states, and their rights, overleap the geographic boundaries of the separate states, uniform and clear in their uniformity. Thus the aim must be defined, and thus the activity limited.

But, if the law of land titles is already in the process of revolution, already in the grip of reform, by reason of influences and forces outside the Conference; if it appears to be inevitable that such revolution and reform are to be consummated, then, not only is it the privilege, but it is the fundamental duty of the Conference to grasp the opportunity to impress uniformity

of state action upon the Torrens Laws in their very making.

Such seems indeed to be the actual situation which confronts us.

Twelve states have already adopted the Torrens System for their own, and a majority of them are states which are recognized to be exemplars, at least in their conception of excellence in statutory law. That fact may be said to furnish a sufficient demonstration that the Torrens System has been accepted in our country as a desirable, legal process, and points unalterably to the need of immediate attention and effective action by the Conference.

Suppose there be added to this an argument drawn from the operation of the system which should show that certificates of registration, under the plan, were calculated to take their place among the negotiable documents of title with which we have, for so many years, been dealing, in respect of personal property,—as witness our Negotiable Instruments Act, our Warehouse Receipts Act, our Bills of Lading Act, our Certificate of Stock Act, and our Sales of Goods Act. If the adoption of a Uniform Torrens Act were to bring about in whole or in part something of the same fluidity or negotiability of land, as has been brought about in the case of personal property by the Uniform Acts just enumerated, then indeed this Conference would be required to extend the principle, heretofore approved and tested, to this new subject, and be driven by every consideration of its purpose, its duty and its desire, to the enthusiastic support of uniformity in respect of an adequate Torrens Registration Act.

Such I believe to be the natural and necessary result of a proper Torrens Act and its formulation to that end, I believe, for the reasons given, to be a primary duty of the Conference.

The arguments against the adoption of the Torrens System will be found to rest largely upon the claim that the many decades of user of the old methods of dealing with land titles, negative any possible virtue in the new. There are, of course, other arguments advanced against the system and dealing with particular elements, but the main argument as it is also the general argument, is drawn from the antiquity of the old law and the old custom.

While we yield to no one in our conservatism, in our respect for custom, and precedent, sanctioned by years of observance, nor in our reverence for ancient usage, nevertheless it is only the part of wisdom and of true scholarliness to keep the mind open to try all things common, and "to prove all things,"(1) to see if perchance there may be defects discovered, improvements inaugurated, and conditions bettered, by extending, through the processes of unification, policies adopted by some of the states, even though such policies may have been, in themselves, reversals of what had come to be considered settled doctrines. Antiquity does, indeed, entitle laws and customs to the benefit of every consideration, and every reasonable presumption, but not to unquestioning acceptance. To say that because a law or a usage is well settled, therefore it is sound, is to say that the presumption in favor of it is conclusive; but there can be no such thing as a conclusive presumption.

The expression itself, "conclusive presumption",—is a contradiction in terms. Merely to state the proposition is to refute it. To propose, that, because a system of recording titles and of conveyancing had been in vogue since ancient times, therefore it is the best possible system, would be the extreme of unsound logic. If the same reasoning were applied to all the world's business and relations, there would ensue the death of progress.

Bearing in mind, then, the due weight to be given to age-long practices, estimating at its true value the approval of past generations accorded to the old system, the judicial mind may yet, nay even must, of necessity, if progress is to be served, explore and investigate and test.

So tested, what, it may be asked, will be disclosed as to the formerly well-established method of dealing with land titles, and how will it compare with the so-called Torrens method?

Tested by the action of the states as such, we find that most of those which have seriously considered the respective merits of the two systems, have abandoned the old and adopted the new. Twelve states and, some of them, states which have been wont to be regarded as leaders in improved legislation, have

(1) Thess. v. 21.

thrown their conclusions and the weight of their influence on the side of the Torrens System. New York, Massachusetts, Ohio, Illinois, Minnesota, Mississippi, California, Colorado, North Carolina, Oregon and Washington have stated their determination of the question before us by placing a Torrens Law upon their statute books, and the same is true also of Porto Rico, Hawaii and the Philippine Islands.

Tested by individual opinion of those whose opinion is entitled to grave consideration and persuasive force, we are driven to regard the Torrens System as not only expedient, but as, in the highest degree, beneficial and desirable. Thus Mr. Justice Hughes, now of the United States Supreme Court, when Governor of New York, set the stamp of his approval upon the system by signing a bill embodying it, after thoroughgoing debate and investigation in which those arrayed on both sides of the question had presented their arguments at their best. It is worthy of note that the adoption of the law in New York came only after such a course had been recommended by a carefully selected commission of amply qualified membership which had sifted the factors pro and con, and viewed the subject from all sides, both as a matter of law and of fact. A portion of its report is couched in these significant terms:

> "The method" (referring to the old method) "which is used in New York State and most of the states in this country grows more cumbersome as it becomes older, and in spite of efforts to make it less burdensome is tending to break down of its own weight. The multiplication of records and complication of titles and the repeated expenses of re-examination and the delays incidental thereto, should be avoided, if any possible method of doing so can be devised. We are clearly of the opinion that a system of registering titles may be put into operation in this state, in such manner as to avoid these and other difficulties incidental to the present system and to become of much utility and advantage to conveyancers and owners of real property."

Accordingly the Commission recommended the Torrens System of Land Title Registration and drafted a proposed act which was passed by the legislature and which went into effect

on the first day of February, 1909, since which time it has been improved by amendment.

Again, if the test of the constitutionality of such a law be applied, the lawyer's mind is convinced of the soundness of the system. In view of the decisions beginning with the carefully analytical and clearly phrased opinion(1) of Mr. Justice Holmes, now sitting on the Bench of the United States Supreme Court, with that other notable exponent of the system just mentioned,(2) and ending with a mass of decisions(3) to the same effect in other states, the system may be regarded as having secured a clear title to constitutional sanction.

Tested by business beneficence, the Torrens System would seem to satisfy, to the full, the most exacting requirements. Ease in the disposition of property, convenience of transfer, availability of assets and values for commercial needs and mercantile contingencies;—all these attributes would seem to fairly attach to land under the ideal Torrens Law. And furthermore, in this connection, it is more than a legitimate query, it is a query which conveys with it the undoubted answer,—whether under this system properly perfected the certificate showing the ownership of a piece of land might not be made as readily transferable from hand to hand, from bearer to bearer, as a warehouse receipt or a bill of lading, and take its position as one of the current documents of title with which the Conference has been almost continuously dealing during the past twenty-five years, and with reference to which it has been able to formulate acts acceptable to the states, and effective in practice.

Other arguments and decisions against the system relating to particular features of it, do not commend themselves to experience, on the question of fact, nor to sound principles of interpretation, as a matter of law. The points which are had in mind in this connection are, among others, the following: the substitution of security for insecurity; the reduction of the cost of conveyancing, the elimination of obscurity and com-

(1) Tyler *vs.* The Judges, 175 Mass. 71. (See also 179 U. S. 405.)
(2) Mr. Justice Hughes.
(3) People *vs.* Simon, 176 Ill. 165; Peters *vs.* Duluth, 119 Minn. 96; People *vs.* Chrissman, 41 Colo. 450; Robinson *vs.* Kerrigan, 151 Cal. 41; State *vs.* Westfall, 85 Minn. 437. See also Ohio Constitution, Art. II, Sec. 40. The cases cited are selected from a considerably larger number.

plication, the quieting of titles, and the reduction of litigation to a minimum. It is suggested that the questions here involved have been resolved in experience, as a matter of practice, and in principle, as a matter of theory, in favor of the Torrens System.

Doubtless, in view of these considerations, this body of Commissioners representing the various states will desire to devote at its present sessions, after its years of previous consideration, the time and attention necessary to make its concrete presentment on the subject.

Other acts which the Conference has had under consideration and with reference to which action at the present session is contemplated deserve some words of comment.

CONVEYANCES ACT.

The extent to which real estate enters into the business transactions of the country, and the extent to which real estate values form the bases of credit and the growing volume of relations in which this kind of property forms a part, makes it imperative that action as speedy as may be consistent with due deliberation and care should be taken by the Conference to the end that instruments of transfer and of lien on this class of possessions, should be standardized, and made to accord, throughout the various states. As this subject was one of the very first ever referred to the Conference for its attention, so it should be dealt with and disposed of before the Conference is much older. The fact that the subject is a difficult one should only be an incentive to arouse the zest and abilities of the commissioners to their highest point of stimulation.

The harder the task, the more eagerly it should be approached. It is hoped that the standing committee having this matter in charge will so report at this present session that the Conference may take a decided stand on a concrete proposition.

LIMITED PARTNERSHIP ACT.

The Committee on Commercial Law with its usual and highly commendable productiveness presents to the Conference at this time a Limited Partnership Act, for consideration.

Supplementary as the act is to the General Partnership Act approved at our last session, it may nevertheless, it is apprehended, be cast into such form as to constitute a separate act complete in itself. The Conference in its wisdom will know how to deal with the question, and will doubtless apportion such time for debate upon it as may be reasonably necessary.

ACT PROVIDING FOR INTER-STATE EXTRADITION OF LUNATICS.

From several quarters during the last two or three years have come urgent requests that the laws relating to the extradition of lunatics from one state to another should be made uniform and at our last two sessions, the attention of the Conference has been pointedly directed to the subject by resolutions introduced in behalf of the movement to remedy what was claimed to be a far reaching and serious evil. At our last meeting there was submitted by Commissioner Whitelock of Maryland, a resolution which was adopted without dissent, in this language:—

> "RESOLVED: That the question of providing by uniform state statutes for the return upon gubernatorial requisition of lunatics who flee or have been removed from the state of their residence be and the same is hereby referred to one of the standing committees or to a special committee, as the President of the Conference may determine, with directions to such committee to investigate the question, and if they deem it expedient, then to frame and report to the Conference in legislative form a proper bill for consideration and action."

In pursuance of the resolution, your presiding officer appointed a special committee as therein authorized, and the Committee after studying the subject is now prepared to make its recommendations.

The Conference has never been accelerated or retarded in the performance of its functions by sensationalism or public clamor and it is fervently hoped that it never will be. Laws evolved out of hysteria or panic will almost inevitably be bad laws. Similarly, laws made to fit particular cases, would be found, as

far as their general application might be concerned, to be defective. But, while care should be taken to avoid the hazard involved in submitting to such influence, nevertheless, if calm and deliberate action may be taken, irrespective of any special case or of any sensational instances or of any extravagant views, then perhaps it is opportune to give a just contemplation to the desirability of a pronouncement by the Conference on this subject, a determination also to be made, incidentally, of the question whether a measure designed to provide for extradition in the case of lunatics should or should not also be made more general in its scope, so as to cover *all fugitives from justice.* Commissioners will, of course, bear in mind the provisions of the *Federal* enactment relating to the return of criminals.

OTHER REPORTS.

There will be likewise reports from other standing and special committees, as for example, those relating to the Uniform Automobile Act, the Wills Act, the Act relating to the use of the flag, and to the topic of boiler inspection, and the interest of the Commissioners will be engaged by them, and proper periods of time assigned for their examination and discussion.

DISCRIMINATION.

No more difficult task falls to the lot of the Conference than to select, among the subjects which are pressed upon its attention by various organizations and individuals throughout the country, those which should, by their inherent importance and their timeliness, engage the labors of the Commissioners, relegating subjects which do not attain such prominence or importance as to displace or interfere with those which present questions of paramount significance, to their proper and respective places in the order of consideration. Errors may be made and the fine exercise of judgment required may not operate with absolute exactness or precision, but, nevertheless, the duty is one which may not be shirked or postponed. Constantly through the years of its history, this body has been obliged upon due reflection to take its stand, and that with reasonable prompt-

ness, else the workings of its machinery would be inextricably clogged or suspended in operation. It is no small part of the task of discrimination to recognize and properly stamp for what they are, as something foreign to the province of the Conference, those topics which, although at first blush they may present interesting and timely and impressive features, nevertheless, do not in fact, when closely analyzed, involve in any degree whatever, or at best in only a slight and shadowy degree, interstate interests of the citizens of the various states.

Uniformity of law outside of matters involving such interests cannot claim for itself any advantage or value. On subjects of purely local concern, the Conference may not embark. If it were to do so, it would be derelict to its trust and bind to it duties. If I may be permitted to illustrate that class of subjects which have been urgently pressed upon the attention of the Conference, and which fall entirely outside of its function, I would refer to the request of the "National Association of the Deaf", which, under what must be regarded as a mistaken view of the issue which has just been referred to, has been in recent months presenting its claims to the Conference in respect of the standardization of the laws against begging under the disguise of misfortune. It may be said in a word that however inadequate the various state laws on the subject may be, however divergent their provisions, however much in need of reform in this respect they are, it would be a flagrant violation of the official oaths of the Commissioners, to devote time and attention already fully engaged in the performance of duties which Commissioners are appointed to observe to tasks unrelated to those duties however attractive they might be.

The specific matter under consideration by the National Association of the Deaf has no other than local application. It is inconceivable how it could affect any matter of interstate interest of the citizens. It is a matter strictly of *intra*-state cognizance.

On behalf of the Conference, I may be privileged, therefore, to bespeak the indulgence and the intelligent understanding of those who may have heretofore, or who may hereafter feel, at the first impression, aggrieved by the rejection by this body of their proposals when such proposals would carry the Conference

far afield from the well-defined and strictly circumscribed territory of its operation.

In recounting the important items in the history of the Conference, and the activities of the Commissioners during recent months, as shown, in part, by the reports to which reference has just been made, and in passing to the tasks now lying before us, there should be remarked, if the record is to be made complete, some changes in the personnel of the officers and the members.

1. There terminated directly after our last session, a lengthy period of devoted service, which I believe it has never fallen to the lot of any of us to see equalled, and certainly never surpassed. The performance of his duties as Chairman of the Executive Committee by Judge William H. Staake, our fellow-Commissioner from Pennsylvania, stands as a monument to fidelity. It is particularly noteworthy, as a model of industry, and an inspiring example of the conscientious performance of public duty.

The Conference is fortunate in being able to secure as Judge Staake's successor, a man of such capacities as those of Commissioner Massie, of Virginia.

2. We shall miss from the councils of this body the valuable co-operation and the genial personality of our friends, Commissioners Edward W. Frost of Wisconsin, and Judge Charles N. Potter, of Wyoming, who are no longer appointees from their states, and of Judge Henry H. Ingersoll of Tennessee, and of Charles F. Libbie, formerly associated with us as Commissioner for many years, whose recent deaths we deeply deplore.

3. We are glad indeed to welcome back to our circle the Hon. Hiram Glass of Texas, and the Hon. Charles R. Hollingsworth, of Utah, who have been re-appointed to the Commissions of their respective states, after an interval of absence, and who in years past have given us of their time, experience and abilities, in the work which we pursue.

4. We are obliged to note with deep regret the resignations given to the Commissioners of the District of Columbia, by

our fellow-Commissioners, Messrs. Clephane, Thomas and Baldwin.

CO-ORDINATION.

There is ancient and most solemn authority for the assertion that although the body be composed of many members, they constitute but one organization. The language of the authority is impressive. "The body is one and hath many members, and all the members of that one body, being many, are one body."(1) This might be assumed mistakenly to be a self-evident truth, were it not for the fact that there be many bodies so devoid of cohesion, so illy regulated and so at war as to their internal parts, that the natural and first presumption is readily rebutted. So many are the exceptions that there can hardly be said to be a rule. The one safe assertion is that nothing approaching effectiveness in the operation of a body can be secured unless there be a complete sympathetic and constantly communicating co-ordination of members.

Co-ordination, in this connection, signifies, not so much an arrangement of program, as an articulation of the parts,—of the machinery of organization. Availing myself of this opportunity to present for the Committee of the Conference which has this particular function to perform, and of which for the moment your President is Chairman, it should be said that the effort of the Committee should be to focus the energies of the Commissioners, to concentrate their powers, on a single point, if need be, until that point be mastered. The members of the Conference are widely scattered geographically, and such separation has great, nay indispensable advantages, in that the sentiment of all parts of the country may be, thus, justly reflected, and in that the convictions of the people of the various sections may be accurately expressed. But, by the same token, this separation is attended, or will be attended, by correspondingly great disadvantages, unless care be exercised in devising expedients to forefend against them. Such an expedient if wisely employed is found in our Co-ordination Committee. It will depend for its effectiveness upon its conception of its duties, and upon the methods which it adopts in the performance of those duties. May I venture to suggest an outline, simply by way of indication to the Conference, which, when it shall have been properly debated, and if need be, modified, shall be perpetuated in our constitution by an appropriate amendment to that document, so that this vital article of our creed, for such it may be regarded, may be plain to read and follow by those who shall come after us, and seek guidance in the performance of their allotted tasks.

(1) 1 Cor. xii. 12, 14, 20.

It is believed, then, that the Committee's activity should follow something of the line here described:

(*a*) Within each month of the year, the Chairman should address to his Committee a round-robin letter setting forth his conception of the most urgent needs of the Conference for the accomplishment of its recognized purpose, whether such need be in the way of the enactment by the states of laws approved by the Conference, or the adoption by the Conference of new laws, which may be urgently pressing for attention, or the appointment of new commissioners, or to draw the attention of the courts to the need of uniformity of interpretation.

(*b*) Each member should add to the letter his views by way of amendment or modification.

(*c*) Having reached a common basis, the Committee should put its views in final printed form, forward them to each member of the Conference, after securing the approval of the Executive Committee, and urge each of such members to give his active support in his own state to the accomplishment of the end recommended, and make his report to the Co-ordination Committee with reference to the same.

(*d*) The Committee should, on any matter lying within the particular province of any standing or special committee, seek the co-operation and advice of such committee.

(*e*) And in passing it may be suggested that the committee would be performing a service of the utmost value if it were to prepare forthwith a set form or skeleton for the reports of the respective commissioners annually made to the Executive

Committee, setting forth the enactment of any statutes or the rendition of any decisions affecting uniformity of law, or otherwise of intimate interest to the Conference. The material thus supplied to the Chairman of the Executive Committee from year to year, pursuant to his call and as required by our Constitution, would reach him in such a form as to make its compilation scientifically accurate and, practically a matter of comparative ease; and at the same time would indicate to the respective commissioners the precise material required of them, and reduce the labor, involved on their part, to a minimum.

Thus will the body and all its parts work together, and thus be secured the utilization of all the faculties embodied here, and thus will the loss of wasted energy and fragmentary effort be reduced to a minimum.

The important thing in this connection is to remember that co-ordination is not simply concentration; it is not merely co-operation; it is not simply making and following a program. All these are important, and are essential parts of co-ordination; but co-ordination means more than any one of them. It means the performance efficiently and effectively, by every separate unit in this organization, commissioner, committee and officer, of all and every the tasks which fall into his or its particular province, with an eye single to the purpose of uniformity. Every unit must support every other unit and all must unite in the aid of each. If there be a state which finds it hard to recognize the value of the principle of uniformity of law, as embodied in any one or the other of the acts of the Conference, then the committee which framed the act must, in conjunction with the commissioners of that state, make a brief in support of it, study the temper of the legislature then in session, secure the support of the local Bar Association, if it may be secured, and overcome the difficulty by concerted action. It may be suggested that it would be wise in the case of each of the acts, as it is promulgated by the Conference, and even in advance of the occurrence of a contingency calling for its immediate use, to prepare a short memorandum embodying the arguments generally in support of uniformity, as well as the argument specifically in support of the particular act, for use by the Commissioners in submitting the act to their local Bar, their own particular Bar Association and their state legislatures. It is submitted that there is perhaps no more practical or useful action which could be taken at this time in the furtherance of co-ordination and to effectually carry out our objects, than to establish a course of procedure in pursuance of which such a brief of arguments and authorities, and such a memorandum embodying the particularly persuasive considerations which brought about the adoption of the specific measure referred to, should be always available for presentation, when and where the need arises.

By the adoption of such methods, co-ordination is transmuted from an attractive theory into an effective practice.

BIBLIOGRAPHY.

It is a dictum of sound philosophy coming down to us from a remote age and from the lips of a great teacher that it is "by their fruits ye shall know them." The fruits grown by the patient planting, and watering and tending, by the Conference, are the Uniform Acts brought to a fine state of maturity, approved, and submitted to the State Legislatures. But let us not forget that no fruit is grown or ripened without *leaves*. In our case it is the "leaves" of literature, protecting and giving food and drink and life to the fruit which is in course of production. Those "leaves" are not only an important, they are an indispensable part of the work done by the Conference, and by its friends, yes, and even by its critics. They should be welcomed, cherished and perpetuated.

The bibliography of the movement for uniform laws is one of the things upon which we may well lay particular emphasis at this time, and with reference to which you will perhaps accord me the privilege of making a somewhat urgent recommendation.

At this stage of the development of the Conference there should be a Bibliography, as complete as may be, compiled, arranged and published, after some carefully devised and scientifically accurate plan.

Even you, who have nurtured and watched with deep solicitude the growth of our cause, would, it may safely be predicted, be astounded at the extensiveness, the scope, the depth and

breadth of the literature which has accumulated upon our subject,—the essays, the theses, the addresses and the critical analyses of our history, activities and progress, which have been made. They furnish not only an ample fund of information upon the theme but they supply the mirror held up to the organization and its accomplishments, wherein one may see, with clear vision, just what manner of organization we are; and having observed the truth, go on, inspired to still greater improvement, warned against early mistakes, and mindful that the next reflection from the glass of truth must be made much more satisfying than the last.

Into the realm of important legal literature of recent years, have come many treatises dealing with one or another of the branches of the steady growth toward uniformity. It will not do to receive and review them and then discard or neglect them. Every exploration returns with something valuable to the science, for science lives and waxes strong upon the sacrificial offerings laid upon her altars by her devotees. To appropriate the fruits of these tours of discovery, which are taken in the name of uniformity, is but elementary wisdom. To preserve and make available all lawyer-like and scholarly writings upon our subject and thus spread the gospel is no mean or negligible part of the function of its true disciples. By way of illustration, permit me to refer to a certain prize essay, the work of a student of the Buffalo Law School, Sicherman by name, which has come to my hands by the courtesy and interest of Dean Carlos C. Alden, our fellow Commissioner. It happens to deal with two provisions common to many of our uniform acts which enjoin uniformity of interpretation upon the courts. Incidentally the essay convinces us, by implication, of the timeliness and propriety of the grave consideration, which was given at our sessions of last year, to the topic involving the obligation laid upon judicial officers as a matter of law, under the legislative direction, to co-operate in the work which we are endeavoring to perform, by the rendition of decisions in accordance with the duty thus imposed upon them. In the course of a thorough examination of the decisions in various states, dealing first with the general practice of the courts, in adopting, along with a statute from another State, the decisions interpreting its provision, and then passing to a scholarly treatment of cases bearing directly upon the section of our uniform acts expressly providing a method of interpretation of them, it concludes with a discriminating summary of the rules of construction necessarily to be followed by the courts where common statutes are adopted by various states and particularly where there is incorporated into the law such a rule as that which the Conference has made a part of the statutes, which it has proposed.

It is suggested that such an essay as that should be preserved; and doubtless a resolution adopted by this body requesting the editors of the American Bar Association Journal to print it in its next issue, or some succeeding issue, would secure the desired result. Thereafter it will be in such form as to make it of much use by way of reference as a part of the Bibliography of the Conference.

In this connection the opportunity should not be lost of remarking the demonstration, made in this work, of the success which has attended the efforts of the Conference to secure uniformity of judicial decision; and this is done, in part, by the notation, there made, of three cases adjudicated in three different jurisdictions:

in the case of Felt *vs.* Bush, (1) the Court said:

> *"As we view it, therefore, it is our plain duty to follow the numerous decisions that have passed directly upon the Negotiable Instruments Law, and have construed it in accordance with the majority rule".*

To this extent the Court in question went, without being constrained by any such provision uniformity of interpretation as that contained in the acts which this Conference has approved. It might be presumed that Courts would go at least as far when they are constrained by the provision contained in the interpretation provision found in our acts, and such has proven to be the fact. In its adoption of our Uniform Sales Act the State of New Jersey slightly modified the uniform provision (2) respecting construction, so that it required that the act

> "*shall be so interpreted and construed, if possible,* as to effectuate the general purpose of uniformity."

(1) 126 Pac. 688.
(2) Compiled Statutes of New Jersey, Vol. IV. p. 4465, § 74.

Under this form of the provision, the New Jersey Court in the case of Pope *vs.* Ferguson (1), says:

> "The purpose of the codification as expressed in its title was to make uniform the law concerning the sale of goods. Any construction of the statute, therefore, which would put it out of uniformity with the law generally prevailing, relating to that subject, would be in direct violation of its expressed object. *It is consequently necessary to ascertain whether there is any generally accepted rule in other jurisdictions.*"

In another case in still a third jurisdiction, namely, the case of Roland M. Baker Co. *vs.* Brown (2) the Massachusetts Court dealing with the Bills of Lading Act, uses the following language:

> "The previous decisions of this Court by which the defendants were protected * * * have been abrogated and nullified by the statute * * * *The case then must be governed by the decisions, which either were made upon statutes resembling more or less closely the one which we are considering, or, independently of statute, have adopted the rule thereof instead of the one laid down in our former decisions.*"

With these examples of writings, bearing vitally upon our subject, before us there is no need of exhortation to the preparation of an adequate digest or manual of Bibliography to which the Conference may refer and which those, who entertain a desire to investigate uniformity of State law, have a right to expect at our hands, upon demand.

Individual members of the Conference have, themselves, from time to time, made important additions to the library of knowledge of uniformity; and the Conference, as a whole, has published volumes of wide service to its members and others. But there is now indicated the need of a new publication by the Conference, notwithstanding our general reluctance to encourage the too prevalent tendency toward publication, and notwithstanding our strong sentiment against indiscriminate writing.

(1) 87 N. J. L. 566.
(2) 214 Mass. 201.

A CONFERENCE TEXT BOOK.

In these days of extravagant use of printer's ink, when the enormous over-production of statutes, judicial opinions, treatises on legal topics by more or less inspired members of the profession, when put in book form, stagger and overwhelm the intellect of the scholar in jurisprudence, and crowd the book shelves of the practitioner, at the same time that they flatten his pocket-book, it is rare indeed, and a matter of surprise and rejoicing, when a book is found which really serves some genuinely useful purpose. How refreshing and gratifying it would be, if there could be offered to lawyers and others a book which served not merely a single useful purpose, but several useful purposes at once. Such, it is submitted, would be a "Conference Text Book", containing the text of each of the Uniform Acts with a schedule of references, showing where each of such acts is to be found in the laws of the states which have adopted it, the decisions of the courts in the respective jurisdictions, grouped under each section of the act to which they apply, and a brief note appended to each section, summarizing the consensus of opinion and of judicial pronouncement on the proper, uniform, interpretation thereof. Such a volume would prove not only a rich source of information for the judge and the practicing lawyer, alone justifying its existence, but it would also constitute a most potent factor in the promotion of the cause of uniformity, because no one could open the book without realizing, at once, the nature and the purpose of the statutes contained in it, and the necessity, as a matter of sound law, and of successful practice, of serving the dominating spirit of uniformity.

The valuable material collected and scientifically arranged by Commissioner Stockbridge, of Maryland, and his Committee, a nucleus for which was furnished by the record of the late, lamented, Commissioner Eaton, of Rhode Island, would by virtue of such a text book, be made widely available and be of incalculable aid in both the respects just adverted to, as well as others. If the Executive Committee, with Judge Stockbridge, were to act as a board of editors in the production of such a book, they would earn well deserved praise in many quarters,

be conscious of the satisfaction arising from the performance of a high service to the Conference, at an opportune moment, and receive the gratitude of the great body of lawyers which compose our National Bar. Such a book will, by the same token, be a witness in concrete form of the character of the movement, and an object lesson on standardization, which no one could fail to learn. By all means let this good work be speedily set in operation.

It may be said finally on this point that such text book would doubtless be in sufficient demand by purchasers to free it from expense to the Conference, and it could be kept up to date by a paper supplement each year, and a reprinting of the whole volume every five years.

CONCLUSION.

And now, one last word!

There is no crown awaiting the member of this Conference who, in fidelity, does his simple, inconspicuous duty. He asks none. On the contrary he realizes that the highest honor which he could crave, or could receive, is that meed of praise which subsists in the acknowledgment of his colleagues that he has "fought a good fight, that he has kept the faith" reposed in him by them, and by his own commonwealth. Such approval is sufficient and is all that there can ever be; for even when the history of the course of state legislation in this country is studied, and a painstaking account of it is written, the revelation (as we may perhaps permit ourselves to hope) will be that of a body of scientifically developed law, uniform throughout the states, so well rounded and so deeply grounded as to resemble the very growths of nature itself, and so adapted to the needs of the various communities in which it is applied, and so ingrafted into the bodies of the commonwealths themselves, that it shall bear none of the marks of the toil and care and patience employed in its construction, and shall not, therefore, disclose anything of its origin in the councils of the Conference of Commissioners on Uniform State Laws. So let it be!

The joy is in the doing of the work, and in the accomplishment of the end to which the work is directed. Credit is at best only a by-product which adds nothing to the value of the substantial achievement.

This is the last opportunity which I shall have to address you as your presiding officer. May I use the opportunity to say a personal word of appreciation; appreciation of your undeviating devotion to duty; appreciation of the high order of American citizenship which you display in carrying more than your share of civic burdens; appreciation of your disinterested labor for the common good; and last and most intimately,—appreciation of your great and entirely unmerited generosity and loyalty to your retiring president. These things are not sentiments. They are treasures which surpass in richness and in value all other possessions which men gather along that highway which is called "Life."

Significant alike of the civic service in which we are engaged and the relations which are established by our close association, as co-workers, are the words of another(1):

> "Men are not tied to one another by papers and seals. They are led to associate by resemblances, by conformities, by sympathies. It is with nations as with individuals. Nothing is so strong a tie of amity between nation and nation as correspondence in laws, customs, manners and habits of life. They have more than the force of treaties in themselves. They are obligations written in the heart."

(1) Edmund Burke.

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